

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 817 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 and 3 to 5 No.
No.2 Yes.

RAMJIBHAI POPATBHAI KASUNDRA

Versus

S A ZIBA

Appearance:

MR RC KAKKAD for Petitioner
NOTICE SERVED BY DS for Respondent No. 1
MS.SIDDHI TALATI ASSISTANT PUBLIC PROSECUTOR
for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/11/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed praying for a writ of certiorari quashing the externment order dated 2.6.1998, Annexure "B" passed by the respondent no.1 and

also for quashing the order dated 17.8.1998, Annexure "C" passed by the Appellate Authority , respondent no.1.

The brief facts giving rise to this petition are that on 19.5.1998 a show cause notice, Annexure "A" was given by the Externment Authority to the petitioner calling upon him to show cause why in view of his criminal and antisocial activities order for externment be not passed against him. In response to the show cause notice the petitioner appeared. He applied for adjournment which was refused. As such no reply in defence could be tendered by the petitioner. The Externment Authority after considering the material on record passed the order, Annexure "A", against the petitioner externment him from Jamnagar, Rajkot, Junagadh and Kachchh districts for a period of two years. The petitioner preferred an appeal against this order. The Appellate Authority did not consider it expedient to maintain the order against the petitioner for his externment. Instead the Appellate Authority directed the petitioner to file within 30 days a personal bond of Rs.25,000/- and two sureties in the like amount. These two orders are under challenge in this writ petition.

The learned Counsel for the petitioner has challenged the impugned orders on four counts. From his arguments it appears that he is mainly aggrieved with the order of the Appellate Authority in as much as the externment order against the petitioner was not maintained by the Appellate Authority, rather, the Appellate Authority ordered the petitioner to furnish personal bond and two surety bonds in the sum of Rs.25,000/-.

The first contention of the learned Counsel for the petitioner has been that even in the modified order the Appellate Authority has not specified the period for which the personal and surety bonds to be submitted by the petitioner will held good. This contention has force. It seems that the Appellate Authority did not apply its mind that such direction for ordering personal and surety bonds is to be given for a limited period and not for all times to come. Since no time limit has been fixed in the order of the Appellate Authority during which the personal and surety bonds are to remain in force, the order of the Appellate Authority suffers from the vice of non application of mind and incorrect application of law. This is a ground for quashing the order of the Appellate Authority.

Another contention has been that the orders of

the Externing Authority as well as the Appellate Authority suffer from non application of mind on another ground. The contention has been that in the show cause notice three criminal cases have been mentioned against the petitioner. They are Crime Register Nos. 38/97, 397/97 and 20/97. It was argued that in Crime Register No.20/97 the petitioner was acquitted on 22.5.1998 whereas the detention order was passed thereafter on 2.6.1998 and as such since this order of acquittal was not considered by the Externing Authority it suffers from vice of non application of mind. It was further contended that the Appellate Authority also did not consider this acquittal of the petitioner. Hence the order of the Appellate Authority also suffers from the vice of non application of mind. The learned Assistant Government Pleader contended that it was for the petitioner to apprise the Externing Authority as well as the Appellate Authority that he was acquitted in Crime Register No.20/97 on 22.5.1998 and since he did not do so the order cannot be rendered invalid. From the order of the Externing Authority, it is clear that hearing of the case was fixed on 29.5.1998 on which date the petitioner was to file reply to the show cause notice. The Advocate of the petitioner applied for an adjournment to the Externing Authority but according to the externing authority there was no reason to grant him time and as such the application was rejected. It is for this reason that no reply could be submitted by the petitioner in his defence. However, no counter affidavit in reply to para 10 of the writ petition has been filed from the side of the respondent. It has therefore to be accepted, that what is narrated in para 10 of the writ petition remained uncontroverted. In para 10 of the writ petition it is mentioned that in Crime Register No. 39/97 the petitioner was acquitted on 31.12.1997 and in Crime Register No. 38/97 the petitioner was acquitted on 22.5.1998. Ofcourse in the third Crime Register No.38 /97 the petitioner was acquitted on 20.6.1998 i.e. after the externment order was passed. However, the order of the Appellate Authority was passed on 17.8.1998 and prior to that the petitioner stood acquitted in all the three criminal cases mentioned in the show cause notice. This fact was not taken into consideration by the Appellate Authority as well.

On identical facts in Suleman Husa Devji Vs. State of Gujarat & Another, 1989(1) GLR 101, non consideration of acquittal of the petitioner in that case in Crime Register No. 58 of 1986 in which the petitioner was acquitted was held to be fatal which resulted in non application of mind by the Externing Authority. It was

considered to be mechanical way in which the external authority had passed the order of externalment. The Division Bench in this case emphasised that this single instance itself is sufficient to quash the order of externalment. Applying the ratio to the facts of this case before me, which are identical on all four, it can be said that non consideration of the effect of acquittal in Crime Register No. 20 of 1997 on 22.5.1998 rendered the order of the External Authority invalid in as much as it was mechanical order which suffered from the vice of non application of mind, so also the order of the Appellate Authority which failed to take into consideration the acquittal of the petitioner in Crime Register Nos.20 of 1997 and 38 of 1997 in which he was acquitted on 20.6.1998 i.e. about two months before passing of the order by the Appellate Authority.

Another contention has been that the show cause notice is vague. Partly this contention has also substance. The show cause notice, Annexure "A" makes reference of three registered criminal cases. There is however no mention in this show cause notice that some other case of definite date could not be registered because the witnesses who suffered at the hands of the petitioner on account of fear of the petitioner did not come forward to lodge FIRs and that they requested to keep their identities and addresses secret. A vague allegation has been made in the show cause notice that besides above three registered cases the petitioner continued in antisocial activities but due to fear and danger among the people in their mind from the petitioner they are not coming forward for lodging report. This is actually vague allegation. Unless specific incidents were shown in the show cause notice the petitioner could not have furnished effective reply to the show cause notice. This vague allegation found favour with the Appellate Authority which inter alia observed that in addition to three criminal cases mentioned in the show cause notice the petitioner has been beating innocent persons and parting their articles. So far as three criminal cases are concerned all of them resulted in acquittal prior to the passing of the order by the Appellate Authority. So far as allegation of beating innocent persons and parting their articles is concerned, it was vague assertion and not supported by any secret statement by any witness. The show cause notice is therefore partly vague which on the one hand has prevented the petitioner from making effective representation in his defence and secondly, it has rendered the order of the Appellate Authority bad in law in as much as it was passed in mechanical manner giving

weightage to such vague allegation not supported by any material and also it suffers from vice of non application of mind.

If it is mentioned by the two authorities that the witnesses are not coming forward to give statement against the petitioner and are not willing to file any FIR against the petitioner, it does not require any interference in exercise of writ jurisdiction. The above mention of the concerned two authorities cannot be in reference to witnesses of the three criminal cases registered against the petitioner. Those cases already ended in acquittal and there is no material on record to suggest that those cases resulted in acquittal being cases of no evidence or that the witnesses in those cases did not turn up to give their statements. Thus it can be presumed that the witnesses appeared in those cases. Consequently on this ground no interference is required.

For the reasons stated above, in the result the petition succeeds and is allowed. The two impugned orders dated 2.6.1998, Annexure "B" and dated 17.8.1998, Annexure "C" to this writ petition are hereby quashed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt